

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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DERICK GREEN,

Plaintiff,

-against-

CITY OF NEW YORK, STEPHANIE MENDOZA,  
and JOHN DOES 1-6,

Defendants.  
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ORDER

18-cv-1049 (ENV) (RER)

VITALIANO, D.J.

Derick Green filed this civil rights action, pursuant to 42 U.S.C. § 1983, on February 19, 2018. (Compl., ECF No. 1). After a summons issued, (Summons, ECF No. 5), Green requested that the City of New York and Stephanie Mendoza waive service of process (Reqs. for Waiver of Service, ECF Nos. 3, 4). However, in the ten months that followed the filing of the complaint, Green did nothing further to prosecute this action. (See Order dated Dec. 6, 2018). Accordingly, on December 6, 2018, Judge Reyes issued an order, which required that, no later than December 12, 2018, (1) the parties file a stipulation extending defendants' time to answer, (2) plaintiff file a request for a certificate of default, or (3) defendants file an answer. (*Id.*). The order warned that, if "none of the preceding events occur[red] by the deadlines set forth above, [Judge Reyes would] deem the plaintiff to have abandoned the case and [would] promptly file a Report and Recommendation urging the assigned District Judge to dismiss the case for failure to prosecute." (*Id.*). Plaintiff did not serve this order on defendants until after the deadline passed, (*see* Rameau Decl., ECF No. 8), and, more significantly, did not comply with the order.

Consequently, on January 15, 2019, Judge Reyes filed a *sua sponte* report and recommendation ("R&R"), in which he deemed the plaintiff to have abandoned his case and

recommended that the Court dismiss this action for failure to prosecute and failure to obey a court order. (R&R dated Jan. 15, 2019). With notice of the time to object properly given, (*see id.*), no party has filed an objection to the R&R, and the time to do so has passed.

Where no timely written objection has been filed, a district judge need only review an R&R for clear error. *See Dafeng Hengwei Textile Co., Ltd. v. Aceco Indus. & Commercial Corp.*, 54 F. Supp. 3d 279, 283 (E.D.N.Y. 2014). In accordance with that standard of review, the Court has carefully examined Judge Reyes's R&R, and finds it to be correct, well-reasoned, and free of any clear error. The Court, therefore, adopts the R&R, in its entirety, as the opinion of the Court.

#### Conclusion

For the foregoing reasons, this action is dismissed with prejudice, pursuant to Fed. R. Civ. P. 41(b), for plaintiff's inexcusable failure to prosecute.

The parties are hereby put on notice that having failed to object to the R&R in a timely fashion, they have waived their right to appeal from this Order. *See Caldor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir. 2008).

The Clerk of Court is directed to enter judgment accordingly, to mail a copy of this Order to defendants, and to close this case.

So Ordered.

Dated: Brooklyn, New York  
February 15, 2019

  
ERIC N. VITALIANO  
United States District Judge